

January 10, 2008

Central Illinois Light Company	:	
d/b/a AmerenCILCO,	:	
Central Illinois Public Service Company	:	
d/b/a AmerenCIPS and	:	
Illinois Power Company	:	
d/b/a AmerenIP	:	
	:	07-0539
Approval of Energy Efficiency	:	
and Demand Response Plan	:	SERVED ELECTRONICALLY

NOTICE OF ADMINISTRATIVE LAW JUDGE'S RULING

TO ALL PARTIES OF INTEREST:

Notice is hereby given by the Administrative Law Judge that this matter comes upon motion filed by the Ameren Companies for reconsideration of a decision to strike the direct and rebuttal testimony of Mr. Voytas (Ameren Exs. 2.0, 7.0, and 7.4) for failure to disclose to the ELPC, during discovery, a certain report, upon which, Mr. Voytas relied, when enunciating a conclusion in his rebuttal testimony. Staff, the ELPC, and CUB have all filed responses to the motion for reconsideration.

For the reasons stated herein, this motion is granted, in part.

At the time the evidence was excluded, Mr. Voytas stated that his failure to mention a study, upon which, he relied was "oversight." (See, e.g. Tr. 82). No explanation for this "oversight" was mentioned at trial or in the motion for reconsideration.

Yet, failure to disclose information sought during discovery is a very serious matter. Such action not only violates the Commission's rules, it threatens the very essence of all trials, notice and an (adequate) opportunity to be heard. Without more, "oversight" does not excuse the failure to disclose, or the failure to update disclosure of, potential evidence.

Therefore, it is proper to exclude the testimony giving rise to this "oversight," Ameren Ex. 7.0, Mr. Voytas' Rebuttal testimony.

Even if this testimony were to be admitted, it would be afforded little weight. The passage of testimony from Mr. Voytas' rebuttal testimony, Ameren Ex. 7.0, that led to discovery of this "oversight" is as follows:

"The Ameren Illinois Utilities' customer base has different appliance saturations and appliance vintages than ComEd. (sic). The housing stock in terms of age, square footage and type (single family detached vs. attached or apartment) are also different. These are just some, but not all, of the distinguishing features that may likely shape differences between the utilities' plans."

This testimony provides no foundation as to whether this statement is a personal observation, an observation based on expertise, or one based on an expert report. Also, no explanation as to what the differences between the appliance saturations and appliance vintages was provided. From this testimony, it is not even possible to determine whether the apartment dwellers live primarily in Ameren's territory, or in that of ComEd.

Because Mr. Voytas' testimony was disclosed in advance of trial, in the form of prefiled testimony, it is quite possible that, if this portion of his testimony had been in conformance with the rules of evidence, or, if the proper pretrial motion had been brought, the issue presented in the motion for reconsideration may very well have been resolved in advance of trial. (See, e. g., *People v. Byas*, 117 Ill. App. 3d 979, 988, 453 N.E.2d 1141 (3rd Dist. 1983); *People v. Thrill*, 297 Ill. App. 3d 7, 11, 696 N.E.2d 1175 (2nd Dist. 1998); *Webber v. Armstrong World Industries, Inc.*, 235 Ill. App. 3d 790, 797, 601 N.E.2d 286 (4th Dist. 1992)). The lack of clarity in Mr. Voytas' rebuttal testimony, coupled with his admission at trial that it was his "oversight" that led to non-disclosure of information requested by ELPC in advance of trial, compel the conclusion that his rebuttal testimony should be afforded little weight. In the future, all attorneys are urged to ensure that all evidence presented to this Commission conforms with the rules of evidence.

However, Mr. Voytas' direct testimony, Ameren Ex. 2.0, describes the Ameren Energy Efficiency Plan. As CUB, the ELPC and Commission Staff point out, many witnesses' testimony responded to the information in that document; omission of that document could create confusion, unnecessarily, for the Commission and any appellate court. Therefore, upon reconsideration, Ameren Ex. 2.0, and 7.4, Mr. Voytas' affidavit stating under oath that his testimony is true, shall be admitted into evidence, but, it shall not be considered with regard to Ameren Ex. 7.0.

The ELPC proposes that the Administrative Law Judge decide to admit Ameren Ex. 2.1, which is, Ameren's Energy Efficiency and Demand Response Plan. This request is reasonable and is granted. However, it is this Administrative Law Judge's policy, in order to provide the Commission and the appellate courts with a complete record, to retain a copy of an item of evidence that was not admitted, mark it as not admitted and place it in the record. Therefore, if a copy of this document had been tendered to the Administrative Law Judge at trial, it would be in their possession. It is not.

In order for this document to be admitted into evidence, Ameren has until the close of business on Friday, January 11, 2007, to tender a physical copy of this document to Vickie Murillo, our docket clerk.

Sincerely,

Elizabeth A. Rolando
Chief Clerk

EAR:sc
Administrative Law Judge Sainsot

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